

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Promote Policy
and Program Coordination and Integration in
Electric Utility Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

Order Instituting Rulemaking to Promote
Consistency in Methodology and Input
Assumptions in Commission Applications of
Short-run and Long-run Avoided Costs,
Including Pricing for Qualifying Facilities.

Rulemaking 04-04-025
(Filed April 22, 2004)

**REPLY COMMENTS OF
PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)
ON ALTERNATE PROPOSED DECISION**

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Pursuant to Rule 14.3 of this Commission's Rules of Practice and Procedure, Pacific Gas and Electric Company (PG&E) replies to the comments on the alternate proposed decision (APD) of Commissioner Grueneich.^{1/}

I. THE COMMISSION SHOULD ALTER THE WEIGHTING OF THE MHR AND AHR TO 90 AND 10 PERCENT, RESPECTIVELY.

There are serious flaws with the APD's 50/50 weighting of the Market Heat Rate (MHR) and the Administrative Heat Rate (AHR), as PG&E and TURN, point out. SCE argues that using the AHR in the Market Index Formula (MIF) at all is illegal because it yields prices that exceed SCE's avoided costs.

The MIF in the revised proposed decision (PD) is much more solidly based on the record and is a much more reasonable approach to short-run avoided cost (SRAC) pricing than the APD's MIF. If the Commission is inclined to adopt the APD's MIF, the weighting must be changed to a 90/10 ratio of MHR/AHR if the Commission even hopes to avoid a legal challenge based on the Public Utility Regulatory Policies Act (PURPA).

SCE points out that the APD's ostensible reason for giving a 50 percent weight to a 10 year old formula is to remedy perceived infirmities in the market and the potential for market manipulation, none of which is supported by the record.^{2/} Moreover, the record amply supports the APD's recognition that the NP15 market is where PG&E buys its incremental energy. Given these facts, the correct balance must give at least a 90 percent weight to the MHR, as PG&E and TURN both state.

The Commission should ignore CCC's suggestion that the weighting given to the MHR be no more than one-third. Not even its usual allies support CCC's extreme position.

^{1/} PG&E received opening comments from California Cogeneration Council (CCC), the California Wind Energy Association (CalWEA); the Cogeneration Association of California and the Energy Producers and Users Coalition (CAC/EPUC), County of Los Angeles (County), Independent Energy Producers Association (IEP), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE) and The Utility Reform Network (TURN).

^{2/} Reliability Must-Run and Must Offer Obligations "are not avoidable energy costs – they are payments for capacity..." "Amendment 72 requires load serving entities on scheduling coordinators to submit day-ahead schedules that are at least 95 percent of forecasted hourly demand...." (SCE Comments, p. 6; footnotes omitted; emphasis in the original.)

CAC/EPUC, the County and IEP all support the APD, and by implication, at least a 50 percent MHR weighting. The Commission should reject CCC's proposed weighting.

II. THE COMMISSION MUST ALTER THE APD'S USE OF A 24-MONTH ROLLING AVERAGE IN THE MHR.

In its comments, PG&E explained why the APD's use of "a 24-month rolling average of the weighted average price of forward market prices for NP15 (for PG&E)" is problematic.^{3/} PG&E recommends that the Commission use the average of two months of price quotes for the delivery month as the basis for the calculation of the MHR rather than a 24-month average. IEP, SCE, SDG&E and TURN all identify similar problems with the 24-month average, indicating that this element of the APD must be changed. PG&E's is a practicable solution.

III. THE COMMISSION SHOULD REJECT CCC'S PROPOSAL TO SET THE BURNER TIP GAS PRICE IN PG&E'S MIF USING CITY-GATE PRICES.

CCC argues that PG&E should "use the City-gate price plus tariffed transportation rates from the City-gate to the burner tip..."^{4/} CCC's claim that this proposal "was not controversial" is wrong. PG&E disputed this as recently as in its reply to the PD, when CCC made the same suggestion.

CCC's proposal clearly violates Public Utilities Code section 390(b), which mandates the use of border indices. City-gate prices are not border prices because they include the cost to transport the gas from the border to the City-gate.

IV. THE APD CORRECTLY DEFERS FURTHER CONSIDERATION OF THE TOU/TOD FACTORS TO ANOTHER PROCEEDING.

The APD concludes that parties who recommended changes to the Time of Use (TOU) and Time of Delivery (TOD) factors "did not provide a sufficient showing to support their recommendations."^{5/} CCC, however continues to agitate for its proposal, which it says is consistent with the E3 model used for energy efficiency and demand-side management programs. The E3 cost calculator to which CCC refers, however, uses "all in" prices, i.e., they

^{3/} APD p. 66; PG&E Comments pp. 7-8.

^{4/} CCC Comments p. 13.

^{5/} APD p. 73.

have both an energy and capacity component. Thus they are inappropriate for deriving TOU/TOD factors for energy only, which is the issue the APD defers.

The Commission should reject IEP's proposal to base the TOU factor on the market price referent (MPR) not only because this proposal is not based on anything in the record, but because the MPR too is an "all in" price irrelevant to a TOU factor for energy alone.

V. THE COMMISSION SHOULD REJECT CAC/EPUC'S "CLARIFICATION" OF THE APD'S NEW STANDARD OFFER BECAUSE THE CONTRACT IS ILLEGAL.

CAC/EPUC would expand the eligibility for APD's new standard offer contract to include QFs whose annual average energy delivery is 164,250 MWh. For all the reasons PG&E set forth in its Comments, this change would make an already illegal contract even more vulnerable to an attack before the Federal Energy Regulatory Commission (FERC). The Commission should reject the APD's proposed new standard offer contract entirely.

VI. THE COMMISSION SHOULD LIMIT THE AVAILABILITY OF THE NEW STANDARD CONTRACTS THE APD PROPOSES.

PG&E agrees with SCE that any new standard offer should be available only to QFs whose net capacity is less than 20 MW. Moreover, the Commission should alter the APD to state explicitly that the APD's Prospective QF Program will terminate once the FERC terminates PG&E's mandatory must-take obligation.

VII. THE COMMISSION SHOULD ADOPT TURN'S PROPOSAL TO DEFINE AN "EXPIRING CONTRACT."

TURN correctly notes that the APD states the new standard contracts the APD requires would be available to "QFs with expiring contracts," without specifying any time period. PG&E agrees with TURN's analysis and remedy, and therefore agrees that the APD should define "expiring QF contracts" to mean QFs whose existing contracts will expire within the next 12 months.

VIII. THE COMMISSION SHOULD REJECT CAC/EPUC'S ATTEMPT TO ALTER THE APD'S PROPOSED IMPLEMENTATION PLAN.

CAC/EPUC complain that QFs have been in "regulatory suspense" for over four years, and therefore suggest a "more rigorous implementation schedule" than the one the APD would

propose. CAC/EPUC anticipate utility “delay and gaming,” and therefore propose “specific guidance” to govern the anticipated contract discussions. CAC/EPUC even go so far as to advocate a newly-minted “Standard Offer,” “offered as a proposed Finding of Fact and Conclusion of Law.”^{6/}

To anticipate contentious negotiations of the standard contracts says more about CAC/EPUC’s intentions than it does about the utilities’. In its reply comments on the PD, PG&E offered to meet and confer with the QFs regarding the contract terms, an offer it now repeats. Moreover, specific Commission “guidance” is not helpful if parties disregard it. CAC/EPUC’s comments demonstrate a disregard for playing by the rules. CAC/EPUC’s attempt to interject a new contract into this proceeding after the record has closed not only disregards the Commission’s page limit on comments, it disregards due process.^{7/} The Commission should reject CAC/EPUC’s proposed “guidance.”

CAC/EPUC’s attempt to end the “nightmare” for the QFs quickly takes a u-turn when it comes to implementing the new pricing proposals. CAC/EPUC proposes that “all features of the order, including a reasonable transition period of at least 30 days, be available before any portion of the order is implemented.”^{8/} This recommendation gives the QFs every incentive to “delay and game” to keep receiving the above-market prices. The Commission should reject CAC/EPUC’s proposal.

IX. THE COMMISSION SHOULD REJECT CAC/EPUC’S PROPOSED “STANDARDS” FOR EVALUATING THE POST-MRTU MARKET.

Noting that the APD directs Energy Division (ED) to review the MIF six months after the operational date of the Market Redesign and Technology Upgrade (MRTU), CAC/EPUC suggest several standards for evaluation. This proposal is based on nothing in the record, and is wholly outside the scope of this proceeding. The Commission should ignore it.

^{6/} CAC/EPUC Comments p. 1, 3, 4.

^{7/} In a similar vein, CAC/EPUC’s suggestions that the decision should find a “waiver of any federal preemption claim” (p. 9) because the utilities did not litigate the RPS program and that the contracts it now may adopt are not subject to the Energy Policy Act of 2005 (pp. 9-11) are procedurally improper and substantively illegal.

^{8/} CAC/EPUC Comments p. 6.

X. THE COMMISSION SHOULD ADOPT THE APD'S AS-AVAILABLE PRICE WITHOUT CHANGE.

Employing virtually identical arguments, CCC and CalWEA claim the APD's as-available capacity price is too low and argue the price should be updated to \$64.77 (CCC) and \$76.55 (CalWEA) per kW-year in 2008. The fact that the prices differ suggests that \$76.55 is overreaching.

CAC/EPUC argue there should be no deduction for ancillary services (A/S). Their rationale is that a typical QF is not paid regardless of delivery, unlike a Combustion Turbine (CT). The APD's CT proxy, however, is an avoided capacity cost for a typical CT, not a typical QF's power plant, so the deduction for A/S value is required.

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September 17, 2007

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL OR U.S. MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, 77 Beale Street, San Francisco, CA 94105.

I am readily familiar with the business practice of Pacific Gas and Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On the 17th day of September 2007, I served a true copy of:

**REPLY COMMENTS OF
PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)
ON ALTERNATE PROPOSED DECISION**

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service lists for R.04-04-003 and R.04-04-025 with an e-mail address.

[XX] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service lists for R.04-04-003 and R.04-04-025 without an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 17th day of September, 2007 at San Francisco, California.

/s/

DONNA LEE

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R0404025: Commissioner Assigned: Michael R. Peevey on December 20, 2005

ALJ Assigned: Julie Halligan on April 28, 2004

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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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R0404003: Commissioner Assigned: Michael R. Peevey on April 6, 2004

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R0404025: Commissioner Assigned: Michael R. Peevey on December 20, 2005

ALJ Assigned: Julie Halligan on April 28, 2004

CPUC DOCKET NO. R0404025 (QF) CPUC REV 08-30-07

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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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R0404003: Commissioner Assigned: Michael R. Peevey on April 6, 2004

ALJ Assigned: Carol A. Brown on August 12, 2004; **ALJ Assigned:** Mark S. Wetzell on April 6, 2004

R0404025: Commissioner Assigned: Michael R. Peevey on December 20, 2005

ALJ Assigned: Julie Halligan on April 28, 2004

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